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## MEMORANDUM

**TO:** Chuck Carpenter, MHCO Executive Director

**FROM:** Phillip C. Querin, QUERIN LAW, LLC

**DATE:** January 22, 2019

**RE:** Analysis of Senate Bill 608

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There are essentially two parts to this bill:

- The ***first part*** deals with proposed changes to the general landlord-tenant law (*excluding* manufactured homes subject to ORS 90.505, et seq.), and the second part deals with the manufactured housing side of the law.
  - While the first part does not directly deal with space rentals in manufactured housing communities (where residents own their own homes), I will address those portions of the general landlord-tenant law that impact:
    - **Recreational Vehicles**. The leasing of space to recreational vehicles (which are governed by the general landlord-tenant laws); and
    - **Park-Owned Homes**. The rental of park-owned homes, which are not regulated by the manufactured housing side of the law, since the occupying tenant does not own the home.
- The ***second part*** of the bill primarily affects ORS 90.600, the law governing rent increases.

### **PART I – GENERAL LANDLORD-TENANT LAW CHANGES**

#### **Periodic Tenancies**

##### **1. Week-to-Week Tenancies**

If a tenancy is week-to-week, the landlord or the tenant may terminate the tenancy by a written notice given to the other at least 10 days *before* the termination date specified in the notice. *[This represents no change to the current law.]*

## 2. Month-to-Month Tenancies.

***Executive Summary:*** *Tenants may terminate upon 30-days written notice – no change to current law. Landlords may terminate during first year of tenancy with 30-days’ notice – no change to current law.*

***But after the first year of tenancy, landlord must have cause. If the cause is due to certain “Landlord Qualifying Reasons” one months’ payment is required to be paid to the tenant along with the 90-day notice. No payment is required for landlords of 1-4 family dwellings.***

Month-to-month tenancies may be terminated as follows:

- a. **By Tenant.** *At any time during the tenancy* by giving the landlord notice in writing not less than 30 days prior to the date designated in the notice. *[This represents no change from the current law.]*
- b. **By Landlord.** *At any time during the first year of occupancy* by giving the tenant notice in writing not less than 30 days prior to the date designated in the notice. *[This represents no change from the current law.]*
  - i. However, the landlord may not “reset” the rent for the new tenant in an amount greater than the CAP, discussed below.
- c. **By Landlord After First Year.** Subject to one exception,<sup>1</sup> *at any time after the first year of occupancy, the landlord may terminate the tenancy only:*
  - i. **For Cause.** For a *tenant cause and with notice in writing* as specified in [ORS 86.782\(6\)\(c\) \(foreclosure trustee sale\)](#), [90.380\(5\) \(dwelling posted as unsafe by gov’t\)](#), [90.392 \(termination for cause\)](#), [90.394 \(termination for failure to pay rent\)](#), [90.396 \(termination on 24-hour notice\)](#), [90.398 \(termination drugs, alcohol\)](#), [90.405 \(termination, unpermitted pet\)](#), [90.440 \(termination in group recovery facility\)](#) or [90.445 \(termination for criminal act\)](#) *[This represents no change from the current law.]* or,
  - ii. **For “Qualifying Landlord” Reasons.** For enumerated reasons (listed below) with 90-days advance written notice. *[Note: Most reasons do not apply to RVs or park-owned home rentals. This means that most terminations of RV tenancies and park-owned home rentals will be subject to For-Cause Evictions only.]*
    - Landlord intends to demolish the dwelling unit or convert the dwelling unit to a use *other than* residential use within a reasonable time;

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<sup>1</sup> *Except* where tenancy is for occupancy in a dwelling unit located in the same building or on the same property as the landlord’s primary residence, *and* the building or the property contains not more than two dwelling units.

- Landlord intends to undertake repairs or renovations to the dwelling unit within a reasonable time because (i) the premises are unsafe or unfit for occupancy; or (ii) The dwelling unit will be unsafe or unfit for occupancy during the repairs or renovations;
- Landlord intends for him/herself or a member of the landlord's immediate family to occupy the dwelling unit as a primary residence *and* the landlord does not own a comparable unit in the same building that is available for occupancy *at the same time* the tenant receives notice to terminate the tenancy; or
- The landlord has:
  - Accepted an offer to purchase the dwelling unit separately from any other dwelling unit from a person who intends in good faith to occupy the dwelling unit as the person's primary residence; and
  - Provided the notice and written evidence of the offer to purchase the dwelling unit, to the tenant not more than 120 days after accepting the offer to purchase.

iii. **Contents of Written Notice of Termination to Tenant.**

- Must specify *reason* for termination and *supporting facts*;  
PCQ COMMENT: E.g. the “reason” would be “violation of Rule XX (be sure to quote), and the “supporting facts” would be a description and picture (if appropriate) of the violation.
- Must state that the tenancy will terminate upon a date not less than 90-days prior to the specified date [*don't forget to add at least 3 additional days for mailing.*]; and
- At the time of delivery of the notice landlord must *pay tenant* an amount equal to one month's periodic rent.  
PCQ COMMENT: This only applies when termination is based upon a Qualifying Landlord Reason – which for RVs and park-owned homes will be rare.
  - Note: The payment requirement does *not* apply to landlords of 1-4 dwelling units

3. **Fixed Term Tenancies (i.e. Leases).**

***Executive Summary: Landlords may terminate if the cause is (a) due to violations of same enumerated statutes for termination of month-to-month tenancies; or (b) after 12 months due to certain “Landlord Qualifying Reasons” plus one months’ rental payment (except for landlords of 1-4 family dwellings). For fixed-term leases of one-year or less, landlord may terminate by giving written notice not less than 30 days before the end of the term and does not have to specify a cause for nonrenewal.***

***If the specified ending date of the lease falls after the 12-month period, the lease becomes a month-to-month tenancy unless: (a) The parties otherwise agree; (b) Tenant gives 30-days’ written notice to landlord; or (c) There are Qualified Landlord reasons given with 90-day written notice and payment.***

*A lease does not automatically roll over to month-to-month tenancy if (a) Landlord gives not less than 90-days' written notice before end of lease term, or (b) Tenant committed three or more documented violations (detailed below).*

**Termination by Landlord:**

- a. For same statutory reasons as above, and the same Qualifying Landlord reasons after 12 months, with same written notice and payment requirements;
- b. **Leases of One Year or Less.** If the specified ending date for the fixed term falls within the first year of occupancy, the landlord may terminate the tenancy *without cause* by giving the tenant notice in writing not less than 30 days prior to the specified ending date for the fixed term, *or* 30 days prior to the date designated in the notice for the termination of the tenancy, whichever is later.
  - i. However, the landlord may not “reset” the rent for the new tenant in an amount greater than the CAP, discussed below.
- c. **Leases Over One Year.** If the specified ending date for the fixed term falls *after the first year of occupancy*, the fixed term lease becomes a month-to-month tenancy upon the expiration, unless:
  - i. The landlord and tenant agree to a new fixed term tenancy;
  - ii. The tenant gives notice of termination in writing not less than 30 days prior to the ending date of the lease or the date designated in the notice for the termination of the tenancy, whichever is later; or
  - iii. The landlord gives written notice under the Qualified Landlord rules above.
- d. **Avoiding Automatic Roll-Over to 30 Day Tenancy for Leases Over One Year.** At the end of the lease it does *not* automatically become a month-to-month tenancy if:
  - i. Landlord gives the tenant notice in writing not less than 90 days prior to the ending date *or*
  - ii. 90 days prior to the date designated in the notice for the termination of the tenancy, whichever is later, *and*:
    1. Tenant has committed three or more (3+) violations of the rental agreement within the preceding 12-month period *and* landlord has given the tenant a written warning notice at the time of each violation:
      - i. Specifying the violation;
      - ii. Stating that landlord may choose to terminate the tenancy at the end of the fixed term if there are three violations within a 12-month period preceding the end of the fixed term; and
      - iii. Stating that correcting the third or subsequent violation is *not* a defense to termination under this subsection; and
    2. The 90-day notice of termination due to violations must state:
      - i. That the rental agreement will terminate upon the specified ending date for the fixed term or upon a designated date not

- less than 90 days after delivery of the notice, whichever is later;
- ii. The reason for the termination and supporting facts; and
  - iii. Is delivered to the tenant concurrent with or after the third or subsequent written warning notice.

**4. Rent Increases.**

- a. Rent may not be increased during first year of the tenancy.
- b. After first year, rent increases are limited to an amount no greater than 7% plus the change in CPI (discussed below in manufactured housing community section).
- c. Exceptions: (a) New Construction (“The first certificate of occupancy for the dwelling unit was issued less than 15 years from the date of the notice of the rent increase.”); or (b) Tenant’s reduced rent is part of a federal, state or local program or subsidy.
- d. Any increases above the CAP must set forth the facts supporting the exemption.
- e. Violation of this provision makes landlord liable for 3X the monthly rent, plus actual damages suffered by tenant.

**PCQ CRITIQUE: For the rental of RVs and park-owned homes it would seem best to keep the tenancies on month-to-month rentals for two reasons: (a) Landlord retains the right to terminate without cause within the first 12 months; and (b) the fixed term lease rules are more complicated when it comes to preserving the right to avoid rolling over into a month-to-month tenancy. In any event, after a resident remains in the community over 12 months, he/she cannot be terminated except with a statutory cause, or 90-days prior written notice based upon a Qualifying Landlord reason.**

**Note: If the park owner rents more than four (4) park-owned homes, he/she would likely be subject to the one-month’s rent requirement if termination was based upon a Qualified Landlord reason. However, as noted above, most of the reasons would not apply – except where a new prospective resident offered to purchase a currently occupied park-owned home for occupancy as a primary residence.**

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**PART II – MFG. HOUSING LAW CHANGES – RENT RAISES**

**Executive Summary. The major change to ORS 90.600 is the imposition of a rent cap equal to the annual average change in yearly CPI plus 7 percent.**

**Rent Cap. Rent increases are limited to 7% plus the September-to-September average change in the CPI, for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor in September of the prior calendar year.**

According to a January 19, 2019 Oregonian article: “(a)nnual increases in the Consumer Price Index, a measure of inflation, for western states has ranged from just under 1 percent to 3.6 percent over the past five years.”

1. **Rental Increases for Month-to-Month Tenancy.** Landlord must:
  - a. Give 90-days’ advance written notice; and
  - b. Increases may not exceed the CAP.
  - c. Note: For manufactured housing communities in the City of Portland, Ordinance 30.01.085 provides for the payment of Relocation Assistance for tenants when the rent increase is 10% or more.
2. **Contents of written notice:**
  - a. Amount of rent increase;
  - b. Amount of the new rent (i.e. total of old rent plus increase);
  - c. Facts supporting the exemption (see below), if the increase is above the CAP; and
  - d. The date on which the increase becomes effective.
3. **Exemptions.** A landlord is not subject to the CAP when:
  - a. New Construction. (“The first certificate of occupancy for the dwelling unit was issued less than 15 years from the date of the notice of the rent increase”); or
  - b. Federally Subsidized Rent. The landlord is providing reduced rent to the tenant as part of a federal, state or local program or subsidy.
  - c. Any increases *above* the CAP must set forth the facts supporting the exemption.
  - d. Violation of the CAP without an exemption makes landlord liable for 3X the monthly rent, plus actual damages suffered by tenant.
4. **Calculation of CAP.**
  - a. No later than September 30th of each year, the Oregon Department of Administrative Services (“the department”) is to calculate the maximum annual rent increase percentage under the CAP for the following calendar year *as seven percent plus the September annual 12-month average change in the* in the CPI as most recently published by the Bureau of Labor Statistics of the United States Department of Labor.
  - b. Not later than September 30th of each year, the department is to publish the maximum annual rent increase percentage calculated pursuant to the CAP.
  - c. It is also required to maintain publicly available information on its website about the CAP for the previous calendar year and for the current calendar year and, on or after September 30th of each year, for the following calendar year.

**PCQ CRITIQUE:** Most problematic of this section of SB 608 is that the CAP is fixed, and makes no exceptions for emergencies, such as a serious septic or well water failure, earthquake or flood damage. Recapture of such non-insured capital expenses in the form of a special assessment could be construed as a “rent increase” even if temporary, and be subject to the CAP. Parks are not the same as single family dwellings where a fire or other casualty loss is contained.

A park-wide casualty loss requiring widespread capital improvements could not be recouped except under the CAP.

Secondly, for recapturing the cost of planned submeter installations, ORS 90.537 (4) permits recovery by raising the rent or imposing a special assessment (over a period of at least 60 months). This approach could be stifled by a rent CAP. I suggest that SB 608 include an exception for recapture of these costs if done under the statute.

I did not see a “freezing” of rents upon tenant turnover, except where termination is without cause within the first 12 months on a periodic tenancy, or nonrenewal is without cause when the lease is for less than 12 months. If a tenant vacated voluntarily the landlord is free to raise rent without regard to the CAP.